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B-275522

December 10, 1996

The Honorable J. D. Hayworth  
Chairman, Task Force on Indian  
Trust Fund Management  
Committee on Resources  
House of Representatives

Dear Mr. Chairman:

This letter responds to your October 29, 1996, request that we provide information for the record on Indian trust fund settlement issues raised at the Task Force's September 26, 1996, hearing. You asked for information on various questions that relate to the following three topics that were discussed by witnesses at the hearing:

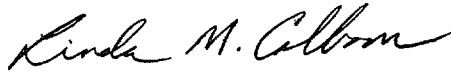
- administration of Individual Indian Money (IIM) accounts,
- options for trust fund settlement, and
- progress on the Special Trustee's strategic plan.

Enclosed are our responses to the questions contained in your letter. We obtained comments on a draft of our responses from officials in the Department of the Interior's Office of Special Trustee for American Indians and the Bureau of Indian Affairs' Office of Trust Responsibilities. Overall, they concurred with our responses to the questions, and we have incorporated their comments where appropriate.

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I hope that this information is helpful. If you have further questions, or would like to discuss any of the issues in more detail, please contact me at (202) 512-9508 or Gayle Fischer, Assistant Director, at (202) 512-9577.

Sincerely yours,

A handwritten signature in cursive script, reading "Linda M. Calbom".

Linda M. Calbom  
Director, Civil Audits

Enclosure

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RESPONSES TO QUESTIONS CONTAINED IN OCTOBER 29, 1996, LETTER

Following are questions asked by the Chairman of the House Task Force on Indian Trust Fund Management and GAO's responses.

IIM ACCOUNTING ISSUES

**Question 1: Under what authority did the government begin maintaining Individual Indian Money (IIM) accounts?**

**GAO Response:** According to our research, no distinction was made between tribal and individual funds until 1918.<sup>1</sup> Prior to that time, Indian funds were handled on a tribal basis. The Secretary of the Interior had long had authority under treaties with individual tribes to invest tribal funds, and did so routinely.

In 1918, the Congress directed the Secretary<sup>2</sup> to segregate the common funds of any Indian tribe, which were susceptible to segregation, and to credit an equal share to each member of the tribe. This was the first recognition of individual Indian monies.

**Question 2: What is the government's current system for administering those accounts?**

**GAO Response:** As of September 30, 1996, Interior's Office of Trust Funds Management (OTFM) was administering almost 317,000 IIM accounts, according to information provided by OTFM officials. Although the aggregate value of the IIM accounts was reported by OTFM to be almost \$470 million on that date, the majority of the IIM accounts had low balances. Almost 185,000 (over 58 percent) of the IIM accounts had balances of \$10.00 or less as of September 30, 1996, according to OTFM. OTFM maintains IIM accounts as separate accounts similar to demand deposit accounts. The cash balances in the accounts are combined and invested as a pool primarily in U.S. Treasury and U.S. agency securities. The IIM accounts earn interest at a rate based on the earnings of all the pooled investments. Trust fund accounting staff and, in some cases, Interior's Office of Trust Responsibilities (OTR) realty staff, at about 60 Bureau of Indian Affairs (BIA) Agency Offices, perform the administrative duties, including accounting,

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<sup>1</sup>See generally, White Mountain Apache Tribe of Arizona v. United States, 20 Cl. Ct. 371, 378-80 (1990).

<sup>2</sup>Public Law 65-159, Sec. 28, 40 Stat. 591 (Act of May 25, 1918), which was eventually codified at 25 U.S.C. 162a.

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billing, collecting, and depositing nonmineral<sup>3</sup> lease receipts, and preparing related accounting records.

BIA's subsidiary IIM accounting system generates quarterly account statements that OTFM mails to account holders from its Albuquerque, New Mexico, headquarters. OTFM sends account statements for minors and noncompetent account holders to their designated guardians. For some minors and noncompetent account holders, BIA Agency Office superintendents are the designated guardians, and they receive the statements for those account holders. BIA Agency Office superintendents also receive account statements for any IIM account holders for which OTFM has no valid address. These statements are to be placed in the account holders' IIM files.

Because BIA's current accounting system does not have an accounts receivable component, BIA Agency Office staff use inconsistent manual procedures for billing and collecting lease revenue. The system also lacks a complete lease master file. In our June 1996 testimony,<sup>4</sup> we reported that an accounts receivable system and an accurate, complete lease master file are needed to ensure that all lease revenues are being billed and collected.

**Question 3: How is the administration of the accounts complicated by fractionated heirship problems and inactive accounts?**

**GAO Response:** The fractionated heirship problem arises from the large number of fractional land and lease ownership interests that currently exist, the substantial increase in such interests over time, and the administrative burden associated with maintaining an increasing number of small accounts to record fractionated interest income. Over time, fractionation has resulted in hundreds of thousands of tiny fractional interests in federal Indian land allotments and in the trust income derived from those allotments. We reported in February 1992,<sup>5</sup> that over 20 percent of the 83,000 land tracts at 12 reservations we reviewed were characterized by fractionated ownership with at least one small ownership interest of one-fiftieth or less.

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<sup>3</sup>Except for the Osage Tribe, Interior's Minerals Management Service (MMS) collects royalty payments on Indian mineral leases and transfers the proceeds to OTFM through the Treasury for deposit in tribal and IIM accounts.

<sup>4</sup>Financial Management: Interior's Management of the Indian Trust Funds (GAO/T-AIMD-96-111, June 18, 1996).

<sup>5</sup>Indian Programs: Profile of Land Ownership at 12 Reservations (GAO/RCED-92-96BR, February 10, 1992).

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Currently, according to OTR, calculation of fractionated lease ownerships may result in a fractional denominator that exceeds 26 digits. Depending upon the amount of lease income to be distributed, it is possible that trust income may have to be collected for several years before sufficient income is collected to entitle an account holder to even 1 cent.

Some administrative complications that result from fractionated ownerships include the following.

- Detailed accounting records must be maintained for all transactions regardless of size—sometimes as little as \$0.03 may be distributed among seven account holders—complicating the accounting.
- In most cases,<sup>6</sup> OTFM policy does not permit funds to be disbursed to the account holders until balances reach \$15, thus increasing the number of IIM accounts that require interest posting and other account maintenance activities.
- Funds sometimes remain in special deposit (suspense)<sup>7</sup> accounts for long periods, according to OTFM, pending OTFM's receipt of ownership information from OTR's Land Title and Records program staff and realty staff.

Currently, OTR maintains official federal Indian land title and beneficial (lease) ownership information. OTR's Land Title and Records program staff are responsible for determining ownership and encumbrance for each federal Indian tract of land and for certifying for the federal government that such ownership and encumbrance is accurate for all legal, title, and evidentiary purposes. However, due to continuing increases in fractionation, inadequate staffing, and inadequate systems, OTR has almost a 2-year backlog in land title and lease ownership determinations and recordkeeping.

Each time ownership changes, OTR's Land Title and Records program staff must perform time-consuming manual determination and documentation of ownership interests. This is because OTR's Land Records Information System (LRIS), as designed, is not capable of performing automated chain-of-title calculations and it does not store chain-of-title or calculated ownership information. LRIS system improvements have been delayed for the

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<sup>6</sup>For oil and gas leases, OTFM policy allows funds to be disbursed to account holders when balances reach \$5.

<sup>7</sup>These special deposit accounts are intended to be suspense accounts with short turn-around times.

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past 2 years due to reductions-in-force and budget cuts. In addition, LRIS is not integrated with OTFM's trust fund accounting systems.

Because official ownership information may be significantly out-of-date, OTFM has relied on unofficial ownership data in BIA's Integrated Resources Management System (IRMS). IRMS ownership information is periodically updated by OTR realty staff located in BIA's Agency Offices based on preliminary information that they have developed for use in probate determinations. However, unlike LRIS information, it is not verified or certified. As a result, OTFM cannot ensure that income is distributed to the proper account holder.

Inactive IIM accounts, which are defined as accounts with no transactions for 18 months, also increase the administrative burden for IIM accounts. Accounts may become inactive because they are in suspense status or because probate decisions are pending. As of September 30, 1996, OTFM reported that there were approximately 60,823 inactive IIM accounts. According to information provided by OTFM, these are generally low balance accounts. Administrative costs associated with inactive accounts include

- the cost of computer processing time;
- the administrative cost and responsibility of safeguarding the accounts; and
- the cost of preparing, printing, and mailing quarterly account statements.

**Question 4: Are there private trust management companies, or other federal agencies, that could perform operational functions under contract with the Department of the Interior?**

**GAO Response:** The government can contract with the private sector for trust management and land records and systems planning services as long as the Secretary of the Interior, as the fiduciary, maintains management responsibility, including the exercise of judgment and discretion. For example, our September 1994 report<sup>8</sup> stated that there are numerous private-sector title and land records companies, many of which use systems and technologies that can be useful to BIA. We also suggested that private-sector firms could assist BIA and OTFM in selecting and integrating trust system packages. In addition, we reported that OTFM could contract for banking or financial management services. However, because of the Secretary's fiduciary responsibility, Interior would need to establish policies and provide instructions on matters such as the following:

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<sup>8</sup>Financial Management: Focused Leadership and Comprehensive Planning Can Improve Interior's Management of Indian Trust Funds (GAO/AIMD-94-185, September 22, 1994).

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- how IIM accounts would be maintained, that is, as investments or as checking and savings accounts;
- whether the financial institutions would collect oil and gas, grazing, timber, and other revenues;
- how ownership and income distribution formulas would be determined;
- whether account maintenance fees would be required from account holders;
- how supervised accounts for minors and incompetents and accounts restricted due to child support or other requirements would be handled;
- how reporting requirements to account holders and BIA management would be met; and
- how the financial institutions would relate to account holders.

Because administration and reporting for over 300,000 IIM accounts would be costly, we suggested that in developing plans to transfer account maintenance responsibilities for IIM accounts, OTFM would benefit from

- developing a strategy to resolve problems associated with small fractionated interests;
- reviewing IIM accounts to first identify and close any inactive accounts;
- cleaning up "hold" accounts;<sup>9</sup>
- correcting account holder address information; and
- considering alternative ways of handling royalty distributions, which are generally withdrawn and do not remain in the accounts, thus contributing to the number of low balance accounts.

These suggestions have been considered by OTFM, and while some actions have been taken, progress to date has been slow due to limited financial resources.

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<sup>9</sup>Hold accounts are a general category of IIM accounts for which distributions cannot be made without some form of approval. They include supervised accounts for minors and noncompetent account holders and accounts that are subject to probate court decisions.

TRUST FUND SETTLEMENT ISSUES

**Question:** Assuming that tribal accounts cannot be reconciled any further and that IIM accounts cannot be fully reconciled, what settlement process do you support which would fairly compensate the Tribes and IIM account holders and would terminate any liability which the federal government might have for any breach of trust responsibility which might have taken place regarding the management of tribal and IIM accounts in the past?

**GAO Response:** We have long raised serious concerns about the ability to reconcile tribal and IIM accounts. Our May 1996 report<sup>10</sup> stated that tribal accounts could not be fully reconciled or audited due to missing records and the lack of an audit trail in BIA's systems. In addition, because BIA did not know the universe of transactions or leases, it was not able to determine the total amount of receipts and disbursements that should have been recorded, further impeding a complete reconciliation. We also reported that due to cost considerations and the potential lack of supporting documentation, reconciliations for individual Indian accounts were not performed, and no alternative procedures were developed to verify these account balances. We concluded that if follow-up meetings with tribes do not resolve concerns about account balances, the legislated settlement process, which we recommended in our September 1995 letter,<sup>11</sup> could be used as a framework for resolving disagreements about account balances. We also concluded that since any attempt to reconcile individual Indian accounts would be costly and the results would be limited, these accounts could be included in the settlement process.

Our September 1995 letter provided draft settlement legislation for discussion purposes. The draft legislation would provide for a mediation process and, if mediation does not resolve disputes, a binding arbitration process. The proposed process draws on advice provided to us by the Federal Mediation and Conciliation Service and the rules of the American Arbitration Association. Both of these organizations have extensive experience in the use of third-party facilitators to provide alternative dispute resolution. The proposed process offers a number of benefits. Because of the informal nature of the process, the third-party facilitator can permit the parties, in the presentation of their cases, to deviate from the more structured rules that generally govern other forms of adjudication. Further, because the decision of the arbitrators would be binding and could

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<sup>10</sup>Financial Management: BIA's Tribal Trust Fund Account Reconciliation Results (GAO/AIMD-96-63, May 3, 1996).

<sup>11</sup>Indian Trust Fund Settlement Legislation (GAO/AIMD/OGC-95-237R, September 29, 1995).



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not be appealed, it offers a final resolution of the dispute. In addition, arbitration has generally been found to be less costly than litigation.

### STRATEGIC PLAN ISSUES

#### **Question 1: What is your opinion of the proposed Phase I of the Special Trustee's strategic plan?**

**GAO Response:** The American Indian Trust Fund Management Reform Act of 1994 established a Special Trustee for American Indians and required the Special Trustee to develop a comprehensive strategic plan for trust fund management. As envisioned in the act, a comprehensive strategic plan for Indian trust fund and asset management would reflect the requirements of Interior, BIA, the Bureau of Land Management (BLM), MMS, OTFM, and other Interior agency Indian trust programs. It would also address the interrelationships of the strategic plans for each of these entities, including information resource management, policies and procedures, and automated systems. In addition, a comprehensive strategic plan would address various trust fund related systems options and alternatives and their associated costs and benefits.

The Special Trustee's February 1996 proposed Phase I strategic plan consisted of a strategic planning concept paper. The concept paper represents progress in that it provides an initial assessment of the problems that need to be addressed in a strategic plan. However, as stated in our June 1996 testimony,<sup>12</sup> the concept paper, which has not yet been revised or expanded into a strategic plan, focuses on one potential system solution for addressing critical OTFM and BIA financial management information requirements and does not address the costs and benefits of other alternatives as a basis for selecting one approach over another. Also, the concept paper focuses on OTFM and related LRIS system improvements, and it does not address all needed improvements or other Interior agencies' Indian programs.

In addition, the concept paper does not explain the rationale for many of the assumptions that support the \$147 million estimate to implement the specified improvements. For example, the concept paper proposes acquiring new trust fund general ledger and subsidiary accounting systems but, unlike a strategic plan, it does not analyze the costs, benefits, advantages, and disadvantages of enhancing OTFM's current general ledger and investment accounting system, leasing a new commercial off-the-shelf system that would

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<sup>12</sup>Financial Management: Interior's Management of the Indian Trust Funds (GAO/T-AIMD-96-111, June 18, 1996).

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include accounts receivable or lease ownership components, or contracting for accounting services instead of improving or acquiring systems.

Since 1992, our reports and testimonies have recommended that the Secretary of the Interior require a comprehensive review of the entire trust fund operation, including those functions outside the control and responsibility of OTFM, in order to determine how, and by whom, the trust funds can best be managed. Our September 1994 report stated that to develop a comprehensive strategic plan

- Interior, BIA, BLM, and MMS managers would first need to analyze the Secretary's overall trust fund management mission;
- the managers would need to identify all the activities needed to fulfill this mission, including any critical activities that are not being performed, activities that may be unnecessary, and any current problems in performing current activities;
- managers would need to identify internal and external improvement options and the feasibility of each as a means of developing a comprehensive strategic plan; and
- Interior, BIA, BLM, and MMS managers would need to establish priorities and milestone dates for completing corrective actions.

We have not yet seen this level of coordination in Interior's trust fund strategic planning efforts.

The Special Trustee told us that during fiscal year 1996, he lacked the resources to adequately plan for needed trust fund system improvements. He said that he will use about \$1 million of his fiscal year 1997 appropriation to contract for a requirements analysis that will provide him with information on systems integration alternatives and electronic equipment needs. In October 1996, the Special Trustee issued a request for proposals for contractor assistance in this requirements analysis, including

- identifying the internal and external users of Indian trust fund data,
- determining the needs and requirements of internal and external users,
- identifying training and equipment needs of internal and external users,
- identifying the business events in the day-to-day trust business and the relationships among those events,

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- compiling an inventory of equipment currently in use, and
- analyzing the needs and requirements for a new system or systems to achieve the eight elements outlined in the strategic planning concept paper.

The Special Trustee told us that he hopes to use the results of the requirements analysis to complete his strategic plan and submit it to the Secretary of the Interior by March 31, 1997. However, we are concerned that the analysis is primarily a user needs study and does not include an assessment of alternatives for trust fund administration nor fully consider the feasibility and the costs and benefits of alternative improvement options.

**Question 2: Will implementation of this plan allow the federal government to properly discharge its trust responsibilities and provide an accurate accounting to American Indian trust beneficiaries in the future?**

**GAO Response:** As noted in the above responses, the Special Trustee's February 1996 concept paper has not yet been revised or expanded into a strategic plan. In addition, the concept paper does not address programs across Interior agencies. The American Indian Trust Fund Management Reform Act of 1994 gives the Special Trustee responsibility for oversight of reforms relating to the management and discharge of the Secretary's trust responsibilities to Indian tribes and individual Indians, including the reform of policies, practices, procedures, and systems in BIA, BLM, and MMS. However, the concept paper, which does not address how this broad oversight function will be achieved, focuses primarily on OTFM, with some focus on OTR.

Until the Special Trustee revises and expands the February 1996 concept paper into a comprehensive strategic plan, there is no way to determine whether implementation of that plan would allow the federal government to provide an accurate accounting to American Indian trust beneficiaries in the future. Furthermore, even with an adequate plan, future results will be dependent upon sufficient resources and oversight and will require effective coordination and implementation of Indian trust programs across Interior, including OTFM, BIA, BLM, and MMS.

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